

STATE OF MICHIGAN



JAMES J. BLANCHARD, Governor

DEPARTMENT OF TREASURY

ROBERT A. BOWMAN, State Treasurer

STATE TAX COMMISSION

4th Floor Treasury Building
Lansing, Michigan 48922 Telephone 517 373-0500

COMMISSION MEMBERS

THEODORE P. MANSOUR
LEROY J. NELSON
ROBERT O. VANDERMARK

TO: Assessing Officers
FROM: State Tax Commission
RE: Public Records; Inspection and Furnishing Copies

As the result of questions from local governmental units it is necessary to further clarify two comments in the original Bulletin No. 5, dated March 1, 1989 regarding Public Records.

First, any property statement, either for real or for personal property, shall be confidential. It shall be used only for the administration of the property tax at the local level, the county level, or at the state level. The board of review is an integral part of assessment administration and may see the statements or working papers equivalent to the filed, confidential property statements.

The assessing officer, board of review members, county equalization director, State Tax Commissioners or Property Tax Division staff would be subject to the penalties prescribed in section 23 of the General Property Tax Act, being MCL 211.23, for damages resulting from the use of the confidential information for any other purpose. The confidential statements are exempt from the provisions of the Freedom of Information Act.

Under a Court Order working papers concerning another taxpayer were made available to another taxpayer who had filed suit. (See Xerox v. City of Detroit (1971) 184 N.W. 2d 919, 384 Mich. 574 Michigan Supreme Court decision.)

The second clarification concerns examination of public records, other than confidential property statements. Bulletin No. 5 refers to a resident's right to inspect public records at no charge. This was not intended to limit free inspection to residents. The public may have access to inspect public records whether they are residents or nonresidents. The townships, cities and villages have no statutory authority to impose any fee for such inspection.

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To: Assessing Officers and Equalization Directors

From: Danny Hulbert

REMINDER!!!

THE MAED SALE LEAD PROGRAM NEEDS YOUR HELP!

The MAED Sale Lead Program has been of help to many assessors and will continue to do so but we need YOU to help the Program. The current sales in the Program are getting out of date and some requests must go unanswered due to age of sales or the lack of sales for the type of property requested.

The August 1989 issue of "The Michigan Assessor" contains an article explaining the MAED Sale Lead Program, complete with forms to use to request or submit sale leads.

Currently, we need all types of property sales but critical requests would include: bowling alleys, recreational campgrounds, large apartment complexes of 100 or more units, marinas, islands, land fill sales and mobile home parks. We will appreciate any sales which are appropriate for the Program and will be VERY appreciative of the above listed types.

If you have any questions about the Program, call Danny Hulbert of the Property Tax Division at (517) 373-3553.



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TO: Assessing Officers

FROM: State Tax Commission

RE: Public Records; Inspection and Furnishing Copies.

We are receiving an increasing number of complaints regarding the failure of assessing officers to provide, without charge, an opportunity for residents to inspect assessment records. We also receive complaints regarding exorbitant amounts being charged for copies of public records.

Section 399.5, M.C.L. provides, in part, as follows:

"Any record that is required to be kept by a public officer in the discharge of the duties imposed on him by law, or that is a writing required to be filed in a public office, or is a written memorial of a transaction of a public officer made in the discharge of his duty, shall be the property of the people of the state . . ."

Note: Personal property statements are confidential pursuant to specific statutory restrictions.

Section 492 of the Criminal Code (M.C.L. 750.492) provides, in its entirety, as follows:

"Sec. 492. * * * Any officer having the custody of any county, city or township records in this state who shall when requested fail or neglect to furnish proper and reasonable facilities for the inspection and examination of the records and files in his office and for making memoranda of transcripts therefrom during the usual business hours, which shall not be less than 4 hours per day, to any person having occasion to make examination of them for any lawful purpose shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 1 year, or by a fine of not more than \$500.00. The custodian of said records and files may make such reasonable rules with reference to the inspection and examination of them as shall

be necessary for the protection of said records and files, and to prevent interference with the regular discharge of the duties of such officer. The officer shall prohibit the use of pen and ink in making copies or notes of records and files in his office. No books, records and files shall be removed from the office of the custodian thereof, * * * except by the order of the judge of any court of competent jurisdiction, or in response to a subpoena duces tecum issued therefrom, or for audit purposes conducted pursuant to Act No. 71 of the Public Acts of 1919, as amended, being sections 21.41 to 21.53 of the Compiled Laws of 1948, Act No. 52 of the Public Acts of 1929, being sections 14.141 to 14.145 of the Compiled Laws of 1948 or Act No. 2 of the Public Acts of 1968, being sections 141.421 to 141.433 of the Compiled Laws of 1948 with the permission of the official having custody of the records if the official is given a receipt listing the records being removed."

- Note: It appears that the inspection period of 4 hours per day could not be required if the officer is employed only on a part time basis or if the office involved is open for fewer than 4 hours per day. Act 71, P.A. 1919 is the county accounting and audit statute. Act 52, P.A. of 1929 deals with the audit of township and school district records and Act 2, P.A. of 1968 is the Uniform Accounting and Budgeting Act for municipalities.

Section 10a, of the General Property Tax Act, (Section 211.10a, M.C.L.) provides, in its entirety, as follows:

"Sec. 10a. All property assessment rolls and property appraisal cards shall be available for inspection and copying during the customary business hours."

Section 15.234, M.C.L., provides, in part, as follows:

"Sec. 4. (1) A public body may charge a fee for providing a copy of a public record. Subject to subsection (3), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14. Copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because furnishing copies of the public record can be considered as primarily benefiting the general public. A copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request, to an individual who submits an affidavit stating that the individual is then receiving public assistance, or if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.

(2) At the time the request is made, a public body may request a good faith deposit from the person requesting the public record or series of public records, if the fee provided in subsection (1) exceeds \$50.00. The deposit shall not exceed 1/2 of the total fee.

(3) In calculating the costs under subsection (1), a public body may not attribute more than the hourly wage of the lowest paid, full-time, permanent clerical employee of the employing public body to the cost of labor incurred in duplication and mailing and to the cost of examination, review, separation, and deletion. A public body shall utilize the most economical means available for providing copies of public records. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs. A public body shall establish and publish procedures, and guidelines to implement this subsection.

(4) This section does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or where the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

Subsections (4) and (5) of Section 15.240, M.C.L. provide, in their entirety, as follows:

"(4) If a person asserting the right to inspect or to receive a copy of a public record or a portion thereof prevails in an action commenced pursuant to this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person prevails in part, the court may in its discretion award reasonable attorneys' fees, costs, and disbursements or an appropriate portion thereof. The award shall be assessed against the public body liable for damages under subsection (5).

(5) In an action commenced pursuant to this section, if the circuit court finds that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall, in addition to any actual or compensatory damages, award punitive damages in the amount of \$500.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body, not an individual, pursuant to whose public function the public record was kept or maintained."

To summarize these sections, it appears clear the assessment records including property record cards, assessment and tax rolls, tax maps and miscellaneous assessment documents are public records belonging to the people of the State of Michigan. Any resident is entitled to inspect the assessors records, not including personal property statements. Reasonable rules and regulations may be made regarding such inspection. No charge can be imposed upon residents for the inspection of public records.

A charge may be made for copies of public records, but such charge must be reasonable and computed in accordance with subsection (3) of Section 15.234, M.C.L. as quoted in this informational bulletin.

Severe penalties may result from the refusal or neglect to allow inspection or to furnish copies of public records.